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**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**49 CFR Parts 107, 171, 172, 173, 175 and 178**

**[Docket No. PHMSA-2011-0158 (HM-233C)]**

**RIN 2137-AE82**

**Hazardous Materials: Adoption of Certain Special Permits and Competent Authorities into Regulations.**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Final Rule.

**SUMMARY:** The Pipeline and Hazardous Materials Safety Administration is amending the Hazardous Materials Regulations (HMR) to adopt provisions contained in certain widely used or longstanding special permits and certain competent authority approvals (“approvals”) that have established safety records. Special permits allow a company or individual to package or ship a hazardous material in a manner that varies from the regulations provided an equivalent level of safety is maintained. An approval is a written consent (document) required under an international standard (i.e., International Maritime Dangerous Goods (IMDG) Code, International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI)), or is specifically provided for in the HMR, and is issued by the Associate Administrator for Hazardous Materials Safety. These revisions are intended to provide wider access to the regulatory flexibility offered in special permits and approvals and eliminate the need for

numerous renewal requests, reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.

**DATES:** This regulation is effective [INSERT DATE 30 days AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of [INSERT DATE 30 days AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Steven Andrews, Office of Hazardous Materials Safety, Standards and Rulemaking Division, (202) 366-8553, or, Diane LaValle, Office of Hazardous Materials Safety, Approvals and Permits Division, (202) 366-4535, Pipeline and Hazardous Materials Safety Administration (PHMSA), 1200 New Jersey Avenue, SE., Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

- I. Executive Summary
- II. Background
- III. Overview of Amendments
- IV. List of Commenters
- V. Regulatory Analyses and Notices

**I. Executive Summary**

PHMSA is amending the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180) to adopt several long standing special permits and competent authority approvals into the HMR. The identified special permits and competent authority approvals have a long history of safety. Special permits allow a company or individual to

package or ship a hazardous material in a manner that varies from the HMR provided an equivalent level of safety is maintained. A competent authority (CA) approval is a written consent (document) required under an international standard (i.e., International Maritime Dangerous Goods (IMDG) Code or International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO TI)) and is issued by the Associate Administrator for Hazardous Materials Safety.

In 2009, an audit of the Special Permits program by the Office of the Inspector General identified a need for an ongoing review of all open special permits with an outlook towards identifying those that should be made part of the HMR to reduce the overall economic burden to both affected industry and the government. Three rulemakings, HM-233A; PHMSA-2009-0289 (75 FR 27205), HM-245; PHMSA-2010-0017 (76 FR 5483), and HM-216B; PHMSA-2010-0018 (77 FR 37962) have successfully codified certain special permits into the HMR. These revisions provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous renewal requests, thus reducing paperwork burdens and facilitating commerce while maintaining an appropriate level of safety.

This Final Rule, HM-233C, continues this initiative by adopting several other long-standing special permits and competent authority approvals with proven safety records into the HMR. The special permits affected by the final rule represent variances from current regulations on topics categorized as follows:

- Limited quantities of liquids and solids containing ethyl alcohol.
- Transportation of solid coal tar pitch compounds.
- Transportation of certain ammonia solutions in UN1H1 and UN6HA1 drums.

- Transportation of spent bleaching earth.
- Requalification of non-DOT specification cylinders in life-saving appliances.
- Use of regulated medical waste containers displaying alternative markings.
- Adoption of special permits to harmonize with FAA Modernization and Reform Act of 2012.

The economic impact of the final rule can thus be summarized as follows:

**NET COST: \$0.** Currently, industry must apply for a special permit in order to ship materials as described in this final rule. Adoption of these special permits into the HMR will reduce the burden on industry by no longer requiring industry to apply for a special permit to ship these materials. Therefore, this final rule does not impose any new costs to industry.

**NET BENEFITS: \$9,900 per year.** (Averaged over 10 years, at a 7% annual discount rate.)

In addition to general positive economic impacts noted above, this final rule will eliminate the need for numerous party-to applications and renewal requests. PHMSA estimates that the adoption of these special permits and competent authority approvals will result in 140 fewer responses per year.

## II. Background

PHMSA is amending the HMR to adopt certain requirements based on existing special permits (SPs) issued by PHMSA under 49 CFR Part 107, Subpart B (§§ 107.101 to 107.127) and certain approvals issued under 49 CFR Part 107, Subpart D (§§ 107.401 to 107.405). A special permit sets forth alternative requirements – or a variance – to the requirements in the HMR in a way that achieves a safety level at least

equal to the safety level required under the regulations or that is consistent with the public interest. See 49 C.F.R. § 107.105(d). Congress expressly authorized DOT to issue these variances in the Hazardous Materials Transportation Act (US Code: 49 USC 5109-5127) as amended. An approval is a written consent (document) required under an international standard (i.e., IMDG Code, ICAO TI), or is authorized in a specific section of the HMR and is issued by the Associate Administrator for Hazardous Materials Safety.

### Special Permits

The HMR generally are performance-oriented regulations, which provide the regulated community with some flexibility in meeting safety requirements. Even so, not every transportation situation can be anticipated and built into the regulations.

Innovation is the strength of our economy and the hazardous materials community is a leader in developing new materials and technologies and innovative ways of moving materials. Special permits enable the hazardous materials industry to quickly, effectively, and safely integrate new products and technologies into production and the transportation stream. Thus, special permits provide a mechanism for testing new technologies, promoting increased transportation efficiency and productivity, and ensuring global competitiveness. Hazardous materials transported under the terms of a special permit must achieve a level of safety at least equal to the level of safety achieved when transported under the HMR or that is consistent with the public interest. Implementation of new technologies and operational techniques may enhance safety. Special permits also reduce the volume and complexity of the HMR by addressing unique or infrequent transportation situations that would be difficult to accommodate in regulations intended for use by a wide range of shippers and carriers.

PHMSA conducts ongoing reviews of special permits to identify widely used and longstanding special permits with established safety records for conversion into regulations of broader applicability. Converting these special permits into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. Additionally, adoption of special permits as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the special permits. Factors that influence whether or not a specific special permit is a candidate for regulatory action include: the safety record for hazardous materials transported or operations conducted under a special permit; potential broad application of a special permit; suitability of provisions in the special permit for adoption into the HMR; rulemaking activity in related areas; and agency priorities. During PHMSA's analysis of the suitability for adoption of each special permit, PHMSA performed a search of incident reports from the previous 10 years to determine whether there were any safety issues related to each special permit.

The special permits addressed in this final rule have hundreds of party status holders. Party status is granted to a person who intends to offer for transportation or transport a hazardous material or perform an activity subject to the HMR in the same manner as the original applicant.

These amendments to the HMR will eliminate the need for approximately 464 current holders to reapply for renewal of 20 special permits. Adoption of special permits into the HMR eliminates significant paperwork burdens. As a condition of a special permit issued by PHMSA and depending on the provisions of the special permit, a copy of each special permit must be: (1) maintained at each facility where an operation is

conducted or a packaging is manufactured under a special permit; (2) maintained at each facility where a package is offered or re-offered for transportation under a special permit; and (3) in some cases, carried aboard each transport vehicle used to transport a hazardous material under a special permit.

### Competent Authority Approvals

The HMR also allows for PHMSA to grant approvals to companies or organizations for the manufacturing of packages in accordance with the HMR. PHMSA has identified approvals that have an established safety record to adopt into the HMR. The approvals PHMSA identified for conversion into the HMR have an established safety record and warrant adoption into regulations of broader applicability. Converting these approvals into regulations reduces paperwork burdens and facilitates commerce while maintaining an acceptable level of safety. A copy of each approval must be maintained at each facility where a packaging is manufactured under this approval. The adoption of component authority approvals eliminates the renewal and maintenance requirements that were previously required. Additionally, adoption of approvals as rules of general applicability provides wider access to the benefits and regulatory flexibility of the provisions granted in the approvals. Factors that influence whether a specific approval is a candidate for regulatory action include: the safety record, whether broadly applicable, related rulemakings, and agency priorities.

### Part 171

#### Section 171.7

Section 171.7 provides a listing of all standards incorporated by reference into the HMR. For this rulemaking, PHMSA is revising the entry for the Compressed Gas Association (CGA) Pamphlet C-6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, 1993 to add a reference to § 172.102, (Special Provisions). This standard has a well-established and documented safety history; its revision will maintain the high safety standard currently achieved under the HMR.

### III. Overview of Amendments

PHMSA would like to note that SP 13124 was accidentally mentioned in this section in the NPRM. It was not PHMSA's intention to mention this special permit in this rulemaking. Special permit 13124 is no longer needed based on a final rule published in the federal register on October 1, 2003 [68 FR 44992] under docket number RSPA-2002-13658 (HM-215E). The special permits and competent authorities mentioned in this rulemaking are available for viewing on PHMSA's website at <http://phmsa.dot.gov/hazmat/permits-approvals>. In this Final Rule, PHMSA is revising the HMR by adopting the following special permits and competent authority approvals:

#### Special Permits

- DOT-SP 9275 - Authorization for the transportation in commerce of certain limited quantities of liquids and solids containing ethyl alcohol and exempt these shipments from the provisions of the HMR. PHMSA is modifying this adoption to limit containers using this exception to 8 fluid ounces and eliminating the need for marking the words "contains ethyl alcohol on the package." Packages



shipping between 8 fluid ounces and 1 gallon under this section are required to place the words “contains ethyl alcohol” on the package.

- DOT-SP 11263 - Authorization for the transportation of Class 9 solid coal pitch compounds in non-specification open-top or closed-top sift proof metal cans or fiber drums.
- DOT-SP 11836 – Authorization for the transportation in commerce of UN1H1 and UN6HA1 drums containing ammonia solutions that do not meet certain requirements contained in §§ 173.24 and 173.24a.
- DOT-SP 12134 - Authorization of exceptions for spent bleaching earth (Division 4.2 PG III)
- DOT-SP 12825 – Authorization to transport Life-saving appliances, self-inflating, containing non-specification steel cylinders between a vessel and an authorized facility for servicing.
- DOT-SP 14479 - Authorization for the use of alternative shipping names and marking requirements for regulated medical wastes.
- Special Permits for Harmonization with the “FAA Modernization and Reform Act of 2012” – PHMSA is adding an exception to the HMR for Oxygen cylinders and other Oxidizing cylinders transported aboard aircraft within the state of Alaska. This language will make several existing special permits no longer necessary. This includes the following special permits: 14903, 14908, 15062, 15075, 15076, 15077, 15078, 15079, 15092, 15094, 15095, and 15143.

#### Approvals

- CA2005120010 - Authorization to manufacture, mark, and sell UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have basis weights that vary by not more than plus or minus 5% from the measured basis weight in the initial design qualification test report.
- CA20060660005 - Authorization to manufacture, mark, and sell UN5M1 and UN5M2 multi-wall paper bags with individual paper wall basis weights that vary by plus or minus 5% from the nominal basis weights reported in the initial design qualification test report.
- CA2006060006 - Authorization to manufacture, mark, and sell UN4G combination packagings with outer fiberboard components that have individual containerboard basis weights that vary by plus or minus 5% from the nominal basis weight reported in the initial design.
- CA2006010012 - Authorization to manufacture, mark, and sell UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have individual containerboard basis weight that vary by plus or minus 5% from the nominal basis weight reported in the initial design qualification test report.

#### Revision to Approvals Renewals

- PHMSA is revising this section to allow for approval holders applying for a timely renewal to continue using their approval after the expiration date if they apply within 60 days of the expiration dates.

#### IV. List of Commenters

In response to the NPRM, PHMSA received 36 comments. A majority of these commenters were in support of the Fibre Box Associations comments to increase the packaging variation of +/- 5% to +/- 10%. Other commenters mostly supported modifying the proposed adoption of SP 9275 to not include the requirement to mark packages with “contains ethyl alcohol.” The commenters and the docket number where the comments are located are listed below:

Commenter	Docket ID Number
American Trucking Association (ATA)	PHMSA-2011-0158-0019
Association of Hazmat Shippers	PHMSA-2011-0158-0031
Atlas Container	PHMSA-2011-0158-0037
Batavia Container, Inc.	PHMSA-2011-0158-0012
Bates Container	PHMSA-2011-0158-0011
Bemis Company	PHMSA-2011-0158-0034
California Box	PHMSA-2011-0158-0025
Council on Safe Transportation of Hazardous Articles, Inc.	PHMSA-2011-0158-0029
Dangerous Goods Advisory Council	PHMSA-2011-0158-0030
Exopack, LLC	PHMSA-2011-0158-0009
Fibre Box Association	PHMSA-2011-0158-0004
Georgia Pacific	PHMSA-2011-0158-0022
Great Northern Corporation	PHMSA-2011-0158-0006
Green Bay Packaging	PHMSA-2011-0158-0008
Greif, LLC	PHMSA-2011-0158-0017

Healthcare Waste Institute	PHMSA-2011-0158-0028
Hood Packaging Corporation	PHMSA-2011-0158-0014
International Paper	PHMSA-2011-0158-0010
International Vessel Operators Dangerous Goods Association Inc (IVODGA)	PHMSA-2011-0158-0026
Langston Companies, Inc.	PHMSA-2011-0158-0036
Lawrence Paper Company	PHMSA-2011-0158-0015
Lonnie Jaycox	PHMSA-2011-0158-0002
Mall City Containers	PHMSA-2011-0158-0021
National Association of Chemical Distributors	PHMSA-2011-0158-0032
Niagara Sheets LLC	PHMSA-2011-0158-0027
Norampac	PHMSA-2011-0158-0020
Packaging Corporation of America	PHMSA-2011-0158-0024
Packaging Services	PHMSA-2011-0158-0005
Paper Shipping Sack Manufacturers' Association (PSSMA)	PHMSA-2011-0158-0018
Porto Packaging	PHMSA-2011-0158-0016
Pro-Pack Testing	PHMSA-2011-0158-0007
SMC Packaging Group	PHMSA-2011-0158-0023
Stericycle, Inc.	PHMSA-2011-0158-0003
United Parcel Service (UPS)	PHMSA-2011-0158-0033
Viking Industries, Inc.	PHMSA-2011-0158-0013
Werthan Packaging Inc.	PHMSA-2011-0158-0035

V. Summary Review of Amendments and Response to Comments

A. Consumer products containing liquids and solids containing ethyl alcohol

DOT-SP 9275 authorizes the transportation in commerce of certain beverages, foods, cosmetics, medicines, medical screening solutions and concentrates containing ethyl alcohol and exempts these shipments from the provisions of HMR. This special permit has been in effect since at least 1985 and had been utilized by hundreds of companies. However, on August 18, 2011 PHMSA found that SP 9275 did not provide a level of safety at least equivalent to the HMR due to the lack of hazard communications markings. This was discovered during PHMSA's review of all special permits as required by the DOT Office of the Inspector General (OIG) to ensure all special permits met an equivalent level of safety. PHMSA issued a revised version of SP 9275 to address the lack of hazard communication markings on August 18, 2011.

In response to the NPRM, PHMSA received several comments on how to adopt this special permit. Several commenters opposed the requirement for the shipments under the proposed section to require the words "contains ethyl alcohol" on the outside of the package. After careful consideration of these comments, PHMSA is adopting the special permit without requiring the words "contains ethyl alcohol" for shipments of ethyl alcohol in quantities not exceeding 8 fluid ounces in glass containers and not exceeding 16 fluid ounces in non-glass containers. For shipments of ethyl alcohol (not more than 70% concentration) in quantities greater than 8 fluid ounces in glass containers and greater than 16 ounces in non-glass containers, the words "contains ethyl alcohol" are required on the outside of the package. Shipments of ethyl alcohol in quantities of 8 ounces or less are not required to be marked with the words 'contains ethyl alcohol'." (This would apply to both greater than and less than 70% concentration.)

Therefore, PHMSA is adopting the terms of SP 9275 as revised on August 18, 2011 with modification. PHMSA is adopting this special permit to allow certain limited quantities of ethyl alcohol to be excepted from the applicable provisions of the HMR that require the packages to be marked with the words “Contains Ethyl Alcohol.” PHMSA is adding § 173.150(g) to allow for the shipment of limited quantities of ethyl alcohol of not exceeding 8 fluid ounces in glass containers and not exceeding 16 fluid ounces for non-glass containers without the term “contains ethyl alcohol” marked on the outside of the package. Packages containing 8 fluid ounces to 1 gallon shipped under this section require the marking “contains ethyl alcohol” on the outside of the package.

**B. Transportation of solid coal tar pitch compounds.**

DOT-SP 11263 authorizes the transportation of solid coal tar pitch compounds, Class 9, in open-top and closed-top sift-proof metal cans or fiber drums. The special permit has been in effect since 1994 and has been utilized by 5 holders with an acceptable safety performance. In addition, PHMSA has no reported incidents over the past 10 years involving this special permit. The American Trucking Association (ATA) supports adoption of this special permit in response to the NPRM. PHMSA received no negative comments regarding this special permit in the NPRM.

Therefore, PHMSA is adopting the terms of DOT-SP 11263 into the HMR by amending the entry in § 172.101, The Hazardous Materials Table (HMT), for Environmentally hazardous substances, solids, n.o.s., UN 3077, by adding a new Special Provision N91 in Column 7. In addition, in § 172.102 new Special Provision N91 is added in appropriate sequence specifically authorizing the use of a non-DOT specification sift-proof, non-bulk, metal can with or without lid, or a non-DOT

specification sift-proof, non-bulk fiber drum, with or without lid. The fiber drum is required to be fabricated with a three ply wall, as a minimum. The coal tar pitch compound must remain in a solid mass during transportation.

C. Transportation of certain ammonia solutions in UN1H1 drums, UN3H1 jerricans, and UN6HA1 composite packagings

DOT-SP 11836 authorizes the transportation of specific ammonia solutions in specification UN1H1 drums, UN3H1 jerricans, and UN6HA1 composite packagings that do not meet the provisions in §§ 173.24(g) and 173.24a(b)(2). Specific operational controls are required in lieu of compliance with these two requirements. This special permit has been in effect since 1997 and has been utilized by at least 61 holders with an acceptable safety performance. In addition, PHMSA has no reported incidents over the past 10 years involving this special permit. American Trucking Association (ATA) supports adoption of this special permit in response to the NPRM. The National Association of Chemical Distributors supports adoption of this special permit into the HMR. PHMSA received no negative comments regarding this special permit in the NPRM.

Therefore, PHMSA is adopting the terms of DOT-SP 11836 into the HMR by amending the entry in the HMT for “Ammonia solutions, *relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia*, UN 2672”, by adding a new Special Provision 336 in Column 7. In addition, in § 172.102 new Special Provision 336 is added in appropriate sequence specifically authorizing the use of DOT UN1H1 drums, UN3H1 jerricans, and UN6HA1 composite packagings which meet the requirements of Part 178 of the HMR at the

Packing Group I or II performance level except that the packagings do not meet the venting requirements in § 173.24(g) and the hydrostatic pressure test marking specified in § 173.24a(b)(4). Transportation of these packages also requires the door of each van trailer to be marked with “Warning trailer may contain chemical vapor. Do not enter until vapors have dissipated.” The driver of the transport vehicle and the consignee(s) must be trained not to enter the transport vehicle until the ammonia vapors have dissipated, and the emergency response information on the hazardous materials shipping paper must indicate that the vehicle may contain ammonia vapors.

D. Transportation of spent bleaching earth.

DOT-SP 12134 authorizes the transportation of spent bleaching earth as a Division 4.2, solid, PG III, exempt from the provisions of the HMR, except as specifically required by the special permit. Packagings authorized under the special permit are non-specification, sift-proof dump or hopper type vehicles, and sift-proof roll-on/roll-off bulk bins. All authorized packaging must be covered by a tarpaulin, metal cover, or equivalent means during transportation. The special permit also includes specific operational controls, including: the temperature of the spent bleaching earth may not exceed 55° C at the time it is offered for transportation and any time during transportation; drivers must be specifically trained in handling and responding to emergency incidents involving the spent bleaching earth; and transport vehicles must be marked in accordance with § 172.302(a). This special permit has been in effect since 1999 and has been utilized by at least 27 holders with an acceptable safety performance. In addition, PHMSA has no reported incidents over the past 10 years involving this



special permit. PHMSA received no comments regarding this special permit in the NPRM.

Therefore, PHMSA is adopting the terms of DOT-SP 12134 into the HMR by amending the entry in the HMT for “self-heating solid, organic, n.o.s. (spent bleaching earth), UN 3088”, by adding a new Special Provision, B116 in Column 7. In addition, in § 172.102 new Special Provision B116 is added in appropriate sequence specifically authorizing the use of non-specification, sift-proof dump or hopper type motor vehicles, and sift-proof roll-on/roll-off bulk bins, which must be covered by a tarpaulin, metal cover, or equivalent means. The material also is subject to operational controls, including not exceeding a temperature of 55°C (130°F) during transportation, not exceeding a transportation time of 24 hours, and drivers transporting spent bleaching earth must be trained in the properties and hazards of the spent bleaching earth and the actions required to mitigate the self-heating properties of the material that may occur during the transportation.

E. Requalification of non-DOT specification cylinders in life-saving appliances.

DOT-SP 12825 authorizes the transport between a vessel and a U.S. Coast Guard approved inflatable life raft servicing facility of life-saving appliances, self-inflating, containing non-DOT specification steel cylinders for the purpose of the servicing of such life-saving appliances. Specific operational controls are specified in the below listed Special Provision. This special permit has been in effect since 2001 and has been utilized by at least 54 holders with acceptable safety performance. In addition, PHMSA has no reported incidents since 2001 involving this special permit. PHMSA received a comment from the International Vessel Operators Dangerous Goods Association, Inc. (IVODGA)

supporting adoption of SP 12825 into the HMR. PHMSA did not receive any negative comments in response to the NPRM

Therefore, PHMSA is adopting the terms of DOT-SP 12825 into the HMR by revising the entry in the HMT for Life-saving appliances, self-inflating, UN 2990, by adding a new Special Provision 338 in Column 7. In addition, in § 172.102, new Special Provision 338 is added in appropriate sequence requiring that Life-saving appliances, self-inflating, UN 2990 being shipped between a vessel and a U.S. Coast Guard approved life raft servicing facility only be subject to the requirements of this special provision. A material meeting the requirements of this special provision is not otherwise be subject to the HMR.

F. Use of regulated medical waste containers displaying alternative markings.

DOT-SP 14479 authorizes the continued use of regulated medical waste containers manufactured before October 1, 2006 and marked with an alternative shipping name for UN 3291, “Regulated medical waste, n.o.s.” It also allows for orientation arrows that deviate from the prescribed color specification in the HMR. This special permit has been in effect since 2007 and has been utilized by at least 22 holders. In addition, PHMSA has no reported incidents since 2007 involving this special permit. PHMSA received comments from the Healthcare Waste Institute and Stericycle Inc. supporting adoption of this special permit. PHMSA received no negative comments regarding adoption of this special permit.

Therefore, PHMSA is adopting the terms of DOT-SP 14479 into the HMR by amending the entry in the HMT for Regulated Medical Waste, n.o.s., UN 3088, by adding a new Special Provision, 337 in Column 7. Special Provision 337 allows for the use of

regulated waste containers marked with the alternative shipping name of Regulated medical waste, UN3291 and black or white orientation arrows that deviate from the prescribed specifications in § 172.312(a)(2).

G. Adoption of Oxygen Generator special permits to harmonize with FAA Modernization and Reform Act of 2012.

Section 824 of the FAA Modernization and Reform Act of 2012 includes a provision that allows for exceptions for cylinders of compressed oxygen or other oxidizing gases transported in the State of Alaska aboard aircraft. By adopting this statutory exception into the HMR, the following special permits will no longer be necessary: 14903, 14908, 15062, 15075, 15076, 15077, 15078, 15079, 15092, 15094, 15095, and 15143. These special permits all provide exceptions for the transportation of Oxygen and other Division 2.2 Oxidizing gases for transportation aboard aircraft in the State of Alaska. PHMSA received no comments regarding this special permit in the NPRM. Therefore, PHMSA is adopting the terms of these special permits in § 175.34.

H. Competent Authority CA2005120010 for approval of equivalent packagings

This approval authorizes the manufacturing, marking, and selling of UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have basis weights that vary by not more than plus or minus 5% from the measured basis weight in the initial design qualification test report. This approval was issued in 2009 and has demonstrated an acceptable safety performance. PHMSA has no reported incidents involving this approval. PHMSA received several comments in support of comments made by the Fibre Box Association to increase the variation from plus or minus 5% to plus or minus 10%. However, PHMSA does not have the historical

data to support an increase in this variation to plus or minus 10%. Therefore, PHMSA is adopting the terms of CA2005120010 as proposed into the HMR in § 178.516(b)(7).

I. Competent Authority CA2006060005 for approval of equivalent packagings

This approval authorizes the manufacture, mark, and sale of UN5M1 and UN5M2 multi-wall paper bags with individual paper wall basis weights that vary by not more than plus or minus 5% from the nominal basis weights reported in the initial design qualification test report. This approval was issued in 2009 and has demonstrated an acceptable safety performance. PHMSA has no reported incidents involving this approval. PHMSA received several comments in support of comments made by the Fibre Box Association to increase the variation from plus or minus 5% to plus or minus 10%. However, PHMSA does not have the historical data to support an increase in this variation to plus or minus 10%. Therefore, PHMSA is adopting the terms of CA2006060005 in § 178.521(b)(4).

J. Competent Authority CA2006060006 for approval of equivalent packagings

This approval authorizes the manufacture, mark, and sale of UN4G combination packagings with outer fiberboard components that have individual containerboard basis weights that vary by not more than plus or minus 5% from the nominal basis weight reported in the initial design. This approval was issued in 2009 and has demonstrated an acceptable safety performance. PHMSA received several comments in support of comments made by the Fibre Box Association to increase the variation from plus or minus 5% to plus or minus 10%. However, PHMSA does not have the historical data to support an increase in this variation to plus or minus 10%. Therefore, PHMSA is adopting the terms of CA2006060006 in § 178.516(b)(7).

K. Competent Authority CA2006010012 for approval of equivalent packagings

This competent authority authorizes the manufacture, mark, and sale of UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have individual containerboard basis weight that vary by not more than plus or minus 5% from the nominal basis weight reported in the initial design qualification test report. This approval was issued in 2006 and has demonstrated an acceptable safety performance. PHMSA received several comments in support of comments made by the Fibre Box Association to increase the variation from plus or minus 5% to plus or minus 10%. However, PHMSA does not have the historical data to support an increase in this variation to plus or minus 10%. Therefore, PHMSA is adopting the terms of CA2006010012 in § 178.516(b)(7).

L. Revision of § 107.705(c) for renewing approvals

PHMSA is revising this section to allow approval holders applying for a renewal to continue using their approval after the expiration date if they apply at least 60 days before the expiration date. PHMSA did not receive any comments on this proposal and, therefore, it will be adopted as proposed in the NPRM.

V. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This Final Rule is published under the authority of 49 U.S.C. 5103(b) which authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. 49 U.S.C. 5117(a) authorizes the Secretary of Transportation to issue a special permit from a regulation prescribed in 5103(b), 5104, 5110, or 5112 of the Federal Hazardous Materials

Transportation Law to a person transporting, or causing to be transported, hazardous material in a way that achieves a safety level at least equal to the safety level required under the law, or consistent with the public interest, if a required safety level does not exist. This final rule amends the regulations by adopting provisions from certain widely used and longstanding special permits that have established a history of safety and which may, therefore, be converted into the regulations for general use.

B. Executive Order 12866, 13563, 13610 and DOT Regulatory Policies and Procedures

This final rule is considered a non-significant regulatory action under section 3(f) and was reviewed by the Office of Management and Budget (OMB). This final rule is considered a non-significant rule under the Regulatory Policies and Procedures order issued by the Department of Transportation [44 FR 11034]. Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. By building off of each other, these two Executive Orders 12866 and 13563 require agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.”

Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirmed the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) issued January 18, 2011, and Executive Order 12866 (Regulatory Planning and Review) issued September 30, 1993. Executive Order 13610 directs agencies to prioritize “those initiatives that will produce significant quantifiable monetary savings or

significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.” Executive Order 13610 further instructs agencies to give consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.

In this final rule, PHMSA is amending the HMR to adopt alternatives this agency has permitted under widely used and longstanding special permits and approvals with established safety records that we have determined meet the safety criteria for inclusion in the HMR. Adoption of these special permits and approvals into regulations of general applicability provides shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. In addition, the final rule reduces the paperwork burden on industry and this agency resulting from putting an end to the need for renewal applications for special permits. Taken together, the provisions of this final rule promotes the continued safe transportation of hazardous materials while reducing transportation costs for the industry and administrative costs for the agency.

The impact of this final rule is presumed to be minor as no new costs are imposed upon any stakeholders and those that currently hold special permits and CAs will find some relief from regulatory review for current practices. This final rule makes provisions that are currently approved in certain special permits available to all businesses operating in the U.S. without needing to submit party-to special permit applications to PHMSA, and current permit holders will no longer need renewals. Over the past decade, approximately 464 companies have applied for and/or renewed the special permits included in this final rule. Many of these special permits have had positive economic

impacts by allowing companies to be accepted from requirements in the HMR when shipping certain quantities/types of materials or by allowing the use of less expensive non-specification packages when certain provisions are met. It is difficult to quantify the savings these special permits have allowed, but it should be noted that these savings are extended to other firms that would make use of the provisions once adopted into regulations. PHMSA calculates that this rulemaking results in a paperwork reduction that, on average, saves each applicant \$39.50. PHMSA estimates that over a 10-year period there will be an estimated benefit total totaling \$18,328 affecting approximately 140 entities. In accordance with the Federal hazardous materials law (49 U.S.C. 5101 *et seq.*), initial issuances of special permits are for two years and can be renewed for four years thereafter. Thus, over 10 years, a special permit would on average be renewed twice for a total benefit of between \$43,000 and \$47,000. These figures are discounted annually by 3 and 7 percent to reflect the time value of money.

This final rule adopts four approvals into the HMR. This allows manufacturers of affected hazardous materials packaging to continue manufacturing packages without the need to renew their approvals. Adoption of the four approvals results in a one-time total economic benefit of \$158. The renewal cycle for approvals can vary based on the applicant needs and regulatory authority, but are typically renewed every five years. At both 3 and 7 percent annual discount, this yields over \$270 in benefits. Total benefits represent a small but positive sum (between \$46,000 and \$52,000) over 10 years affecting approximately 140 entities.

C. Executive Order 13132



This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule preempts state, local and Indian tribe requirements but does not create any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. Federal hazardous material transportation law, 49 U.S.C. 5101-5128, contains an express preemption provision (49 U.S.C 5125(b)) preempting state, local and Indian tribe requirements on certain covered subjects. Covered subjects are:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or
- (5) The designing, manufacturing, fabricating, inspecting, marking, maintaining, reconditioning, repairing, or testing a package, container or packaging component that is represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This final rule addresses covered subject items (2), (3), and (5) and would preempt any State, local, or Indian tribe requirements not meeting the “substantively the

same” standard. Federal hazardous materials transportation law provides at 49 U.S.C. 5125(b)(2) that if PHMSA issues a regulation concerning any of the covered subjects, PHMSA must determine and publish in the Federal Register the effective date of Federal preemption. The effective date may not be earlier than the 90<sup>th</sup> day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of federal preemption will be 90 days from publication of this final rule in this matter in the Federal Register.

D. Executive Order 13175

This final rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this final rule does not have tribal implications and does not impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to review regulations to assess their impact on small entities. An agency must conduct a regulatory flexibility analysis unless it determines and certifies that a rule is not expected to have a significant impact on a substantial number of small entities. This final rule adopts into the HMR certain widely used special permits. Adoption of these special permits into regulations of general applicability provides shippers and carriers with additional flexibility to comply with established safety requirements, thereby reducing transportation costs and increasing productivity. Entities affected by the final rule

conceivably include all persons – shippers, carriers, and others – who offer and/or transport in commerce hazardous materials. The specific focus of the rule is on the adoption of special permits into the HMR. In a review of the companies using the identified special permits, PHMSA identified a combination of small and large businesses that are affected positively by this rulemaking. For example, the final rule accepts certain shipments from the specific documentation requirements of the HMR; these exceptions will increase shipping options and reduce shipment costs. Overall, this final rule reduces the compliance burden on the regulated industries, such as small businesses that dispose of medical waste, transporters of consumer products containing ethyl alcohol, and airlines transporting oxygen generators, without compromising transportation safety and should provide a slight positive economic benefit (i.e., reduced compliance burden) for those small entities. Therefore, we certify that this final rule will not have a significant economic impact on a substantial number of small entities. For example, special permit 9275 will no longer require businesses to apply for a special permit in order to ship common retail items such as cosmetics that would normally be shipped as a class 3 material.

This final rule has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

PHMSA has an approved information collection under OMB Control Number 2137-0051, “Rulemaking, Special Permits, and Preemption Requirements.” This final

rule results in a decrease in the annual burden and costs under this information collection due to the changes that adopts provisions contained in certain widely used or longstanding special permits that have an established safety record.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This final rule identifies a revised information collection request that PHMSA will submit to OMB for approval based on the requirements in this final rule. PHMSA has developed burden estimates to reflect changes in this final rule. PHMSA estimates that the information collection and recordkeeping burden of this final rule is as follows: OMB Control No. 2137-0051:

Net Decrease in Annual Number of Respondents:	434
Net Decrease in Annual Responses:	434
Net Decrease in Annual Burden Hours:	434
Net Decrease in Annual Burden Costs:	\$17,143

PHMSA received no comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval in the NPRM.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH-11), Pipeline

and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, Telephone (202) 366-8553.

Address written comments to the Dockets Unit as identified in the ADDRESSES section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the DATES section of this rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number (202) 395-6974.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act, 42 USC §§ 4321 – 4375, requires that federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality

(CEQ) regulations requires federal agencies to conduct an environmental review considering (1) the need for the proposed action (2) alternatives to the proposed action (3) probable environmental impacts of the proposed action and alternatives and (4) the agencies and persons consulted during the consideration process. 40 C.F.R. § 1508.9(b).

#### The Need for this Action

The purpose and need of this rulemaking is to adopt certain approvals related to air transportation in Alaska and widely used special permits or those with an established safety record into the HMR for universal use. PHMSA is working to reduce the number of special permits to reduce administrative burden to both the government and private industry while affording the benefits of certain special permits that have been vetted for safety to a wider audience.

This rule follows an FAA statutory provision that requires PHMSA to adopt certain special permits into the HMR. Section 824 of the FAA Modernization and Reform Act of 2012 includes a provision that allows for exceptions for cylinders of compressed oxygen or other oxidizing gases transported in the State of Alaska aboard aircraft. These special permits all provided exceptions for the transportation of Oxygen and other Division 2.2 Oxidizing gases for transportation aboard aircraft in the state of Alaska.

The need for hazardous materials to support essential services and industry means transportation of highly hazardous materials is necessary. PHMSA conducted a periodic review of Special Permits that have a long history of safety. After this review PHMSA determined that certain special permits were candidates for adoption into the HMR.

Special Permit 9275 authorizes the transportation in commerce of certain consumer products of liquids and solids containing ethyl alcohol and exempts these shipments from the provisions of HMR. This Special Permit is used frequently by the cosmetics industry to move very small quantities of ethyl alcohol contained in consumer products. After reviewing the history of this Special Permit, PHMSA found an adequate safety record for adoption into the HMR.

Special Permit 11263 authorizes the transportation of solid coal tar pitch compounds, Class 9, in open-top and closed-top sift-proof metal cans or fiber drums. Coal tar pitch is a black or dark-brown amorphous residue produced by the distillation or heat treatment of coal tar. It is a solid at room temperature and exhibits a broad softening range instead of a defined melting temperature. Among other uses, coal tar pitch is used as a base for coatings and paint, in roofing and paving, and as a binder in asphalt products. This Special Permit authorizes the use of a specification package with a proven safety record in order to mitigate a potential release of coal tar pitch compounds. During a review of long standing Special Permits, PHMSA found that this Special Permit had an adequate safety record and provided an equivalent level of safety to the HMR.

Special Permit 11836 authorizes the transportation of specific ammonia solutions in specification UN1H1 drums, UN3H1 jerricans, and UN6HA1 composite packagings. Ammonia solutions are a clear colorless liquid consisting of ammonia dissolved in water which is corrosive to tissue and metals. This Special Permit utilizes the use of specification packages with a proven safety record in order to mitigate a potential release of ammonia solutions. During a review of long standing Special Permits, PHMSA found

that this Special Permit had an adequate safety record and provided an equivalent level of safety to the HMR.

Special Permit 12134 authorizes the transportation of spent bleaching earth as a Division 4.2, solid, PG III, exempt from the provisions of the HMR. Spent bleaching earth, is a solid waste from the edible oil industry can be converted to a clay-carbon adsorbent for potential reuse in the adsorptive cleansing of vegetable oils. This Special Permit utilizes the use of a specification package with a proven safety record that will mitigate a potential release of spent bleach earth material. During a review of long standing Special Permits, PHMSA found that this Special Permit had an adequate safety record and provided an equivalent level of safety to the HMR.

Special Permit 12825 authorizes the transportation of life-saving appliances, self-inflating, that contain non-DOT specification steel cylinders for the purpose of movement between a vessel and a U.S. Coast Guard approved inflatable life raft servicing facility in conjunction with the servicing of such life-saving appliances. Adoption of this Special Permit is needed to ensure that these life-saving appliances are serviced without delay. During a review of long standing Special Permits, PHMSA found that this Special Permit had an adequate safety record and provided an equivalent level of safety to the HMR.

Special Permit 14479 authorizes the continued use of regulated medical waste containers manufactured before October 1, 2006 and marked with an alternative shipping name for UN 3291 and orientation arrows. The packages are used in the medical waste industry to ship low hazard medical waste to disposal facilities. Adoption of this Special Permit allows the medical waste industry to continue using packages authorizes safely transport medical waste in these pacakging. During a review of long standing Special



Permits, PHMSA found that this Special Permit had an adequate safety record and provided an equivalent level of safety to the HMR.

#### Alternatives to the Proposed Action

Information about benefits of this final rulemaking action can be found in the preamble (i.e., “Overview of Proposed Amendments) to this rulemaking. The alternatives considered in the analysis include (1) the proposed action, that is, adoption of the proposed special permits as amendments to the HMR; (2) adoption of some subset of the proposed special permits (i.e., only some of the proposed special permits) as amendments to the HMR; and (3) the “no action” alternative, meaning that none of the proposed special permits would be adopted into the HMR.

#### Analysis of the Alternatives

##### 1.) Adopt All Special Permits and Competent Authority Approvals

The selected alternative amends certain HMR requirements including methods for packaging, describing, and transporting hazardous materials that are currently permitted under widely used special permits with established safety records for inclusion in the HMR. This final rule allows the transportation of the following hazardous materials and packages in accordance with the following former special permits in ways that vary from certain other provisions in the HMR:

##### *Special Permit 14479*

The adoption of this Special Permit will allow for “UN 3291, Regulated medical waste, n.o.s.,” to be shipped using alternative shipping names and marking requirements for regulated medical wastes. Use of this alternative shipping name and marking requirements is not expected to have any negative effects on safety or the environment.

*Special Permit 12825*

The adoption of this Special Permit allows for the shipment of non-flammable compressed gases in non-DOT specification steel cylinders for use in life-saving appliances. Allowing the uses of non-DOT specification cylinders in life saving appliances is not expected to have any effects on safety or the environment.

*Special Permit 9275*

The adoption of this Special Permit allows consumer products of liquids and solids containing ethyl alcohol to be exempted from the HMR. These low hazard, low quantity packages containing ethyl alcohol are not expected to have any negative effect on safety or the environment.

*Special Permit 11263*

The adoption of this Special Permit allows “UN3077, coal tar pitch compounds” to be shipped in non-specification open-top or closed-top sift proof metal cans or fiber drums. The use of this alternative package for the shipment of coal tar pitch compounds is not expected to have any negative effect on safety or the environment.

*Special Permit 12134*

The adoption of this Special Permit allows “UN 3088, spent bleaching earth” to be exempt from the requirements of the HMR when shipped in non-specification, sift-proof dump or hopper type vehicles. Exempting these materials from the HMR when shipped in these alternative packages is not expected to have any negative effect on safety or the environment.

*Special Permit 11836*

The adoption of this Special Permit allows “UN 2672, ammonia solutions” to be shipped in UN1H1 drums, UN3H1 jerricans, and UN6HA1 composite packages that do not meet provision in §§ 173.24 and 173.24a. Allowing shipments of these materials in these packages is not expected to have any negative effects on safety or the environment.

### *Summary*

These hazardous materials are capable of affecting human health and the environment if a release were to occur. However, adoption of these special permits maintains an equivalent level of safety as provided in the special permits.

### 2.) Adoption of a subset of Special Permits

PHMSA considered a wide array of special permits for adoption. It also considered adopting a smaller subset of special permits.” However, the full benefits would not be realized as some permits would not be adopted.

### 3.) No Action

If no action is taken then Special Permits will continue to be issued resulting in no change to the current potential affects to the environment.

### Probable Environmental Impacts of the Proposed Action and Alternatives

This final rule allows the transportation of the following hazardous materials and packages in ways that vary from certain other provisions in the HMR:

- “UN 3291, Regulated medical waste, n.o.s.” – PHMSA considered whether alternative markings would be sufficient in providing adequate hazardous communication. The package described in this special permit does not differ from packages currently allowed under the HMR with the exception of the allowed markings and thus will not impose any addition risk to the environment.

Medical waste transportation is regulated to avoid risk of injury, infection, and contamination. In addition, as described above, PHMSA has no report of incidents under this special permit and thus expects there will be no impact to the environment.

- Non-flammable gasses shipped in non-DOT specification steel cylinders for use in life-saving appliances – PHMSA considered whether the limited use of non-DOT specification cylinders between U.S. Coast Guard ships and servicing facilities would pose a risk to the environment. The cylinders used in this special permit contain inert gases which if released would pose little to no risk to the environment. The regulation of compressed gas cylinders requires testing to ensure integrity and functionality of the cylinder. Cylinder rupture or failure can cause serious injury or death. In addition, as described above, PHMSA has no reports of incidents under this special permit and thus expects there will be no impact to the environment.
- Beverages, food, cosmetics and medicines, medical screening solutions, and concentrates classed as a flammable liquid or flammable solid containing ethyl alcohol - PHMSA considered whether the shipment of these low hazard consumer products containing ethyl alcohol would pose a risk to the environment. These packages contain ethyl alcohol which is a flammable liquid. A release from one of these containers would pose little risk to safety or the environment due to the very limited quantity in each container. In addition, as described above, PHMSA has no reports of incidents under this special permit and thus expect there will be no impact to the environment.

- “UN3077, coal tar pitch compounds”, - PHMSA considered whether the shipment of coal tar pitch compounds in open-top and closed-top sift-proof metal cans or fiber drums would pose a risk to the environment. Coal tar pitch is a black or dark-brown amorphous residue produced by the distillation or heat treatment of coal tar. Coal tar pitch compounds contain various chemical vapors that become airborne during the heating of coal tar pitch. Coal tar pitch is a flammable liquid and a known carcinogen. An accidental release of “coal tar pitch compounds” could result in contamination of surrounding environmental medium (air, water, soil). However, as described above, PHMSA has no reports of incidents under this special permit and thus expects there will be no impact to the environment.
- “UN 3088, spent bleaching earth” – PHMSA considered whether the shipment of spent bleaching earth in non-specification, sift-proof dump or hopper type vehicles would pose a risk to the environment. These packages contain “spent bleaching earth” which is a solid waste from the edible oil industry. Spent bleaching earth can be flammable, as it contains oil residue. An accidental release of “spent bleaching earth” could result in possible contamination of surrounding environmental medium (air, water, soil). However as described above, PHMSA has no reports of incidents under this special permit and thus expects there will be no impact to the environment.
- “UN 2672, ammonia solutions” – PHMSA considered whether the shipment of ammonia solutions in UN1H1 and UN6HA1 drums would pose a risk to the environment. Ammonia can cause irritation and damage to mucous membranes and lungs, depending on concentration. An accidental release of Ammonia

solutions could result in possible contamination of surrounding environmental mediums (air, water, soil). However, as described above, PHMSA has no reports of incidents under this special permit and thus expects there will be no impact to the environment.

Hazardous materials shipments frequently move through densely populated or environmentally sensitive areas where the consequences of an incident could be loss of life, serious injury, or significant environmental damage. Because of the vastness of transportation networks, nearly any community or ecosystem could be affected by a hazardous materials release during transportation. Therefore, impacts from a release could affect include atmospheric, aquatic, terrestrial, and vegetal resources (for example, wildlife habitats). The adverse environmental impacts associated with releases of most hazardous materials are short-term impacts that can be greatly reduced or eliminated through prompt clean-up of the incident scene.

In all modes of transport, the potential for environmental damage or contamination exists when packages of hazardous materials are involved in transportation incidents. The process through which safety permits are issued requires the applicant to demonstrate that the alternative transportation method or packaging proposed provides an equivalent level of safety as that provided in the HMR. Implicit in this process is that the special permit must provide an equivalent level of environmental protection as that provided in the HMR. Thus, adoption of the special permits as regulations of general applicability maintain the existing environmental protections built into the HMR. The special permits and approvals adopted into the HMR have consistently demonstrated a long history of safe use. In its review of these special permits and approval, PHMSA did

not identify any incidents that had a significant effect on the environment. These special permits have a long history of transporting the above mentioned hazardous materials safely and without any effects on the environment. Therefore, we find that adoption of the above described special permits into the HMR will not have any significant positive or negative impact on the environment.

#### Agencies and Persons Consulted during the consideration process

This final rule would affect some PHMSA stakeholders, including hazardous materials shippers and carriers by air, highway, rail and vessel. PHMSA sought comment on the environmental assessment contained in the October 22, 2012, NPRM published under Docket PHMSA-2011-0158 [77 FR 64450] (HM-233C) however, PHMSA did not receive any comments on the environmental assessment contained in that rulemaking. In addition, PHMSA sought comment from the following modal partners:

- Federal Aviation Administration
- Environmental Protection Agency
- Federal Motor Carrier Safety Administration
- United States Coast Guard

#### Conclusion

PHMSA is making numerous amendments to the HMR through the adoption of special permits and approvals. The amendments adopted in this final rule are intended to update, clarify, or provide relief from certain existing regulatory requirements to promote safer transportation practices; eliminate unnecessary regulatory requirements; finalize

outstanding petitions for rulemaking; facilitate international commerce; and, in general, make the requirements easier to understand and follow.

Given that this rulemaking amends the HMR to adopt provisions contained in certain widely-used or longstanding special permits that have an established safety record, these changes in regulation should in fact increase safety and environmental protections. Furthermore, while the net environmental impact of this rule will be positive, we believe there will be no significant environmental impacts associated with this final rule

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477), or at [www.dot.gov/provacy](http://www.dot.gov/provacy).

K. Executive Order 13609 and International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the



absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Public Law 96-39), as amended by the Uruguay Round Agreements Act (Public Law 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of the final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with E.O. 13609 and PHMSA's obligations.

### **List of Subjects**

#### **49 CFR Part 107**

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and record keeping requirements.

#### **49 CFR Part 171**

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

#### **49 CFR Part 172**

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements

#### **49 CFR Part 173**

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

#### **49 CFR Part 175**

Hazardous materials transportation, Air carriers, Radioactive materials, Reporting and recordkeeping requirements.

#### **49 CFR Part 178**

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

### **PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES**

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101-5128, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

2. In § 107.705, revise paragraph (c) to read as follows:

**§ 107.705 Registrations, reports, and applications for approval.**

\* \* \* \* \*

(c) For an approval with an expiration date, each application for renewal or modification must be filed in the same manner as an original application. If, at least 60 days before an existing approval expires the holder files an application for renewal that is complete and conforms to the requirements of this section, the approval will not expire until final administrative action on the application for renewal has been taken. Operation under an expired approval not filed within 60 days of the expiration date is prohibited. This paragraph does not limit the authority of the Associate Administrator to modify, suspend or terminate an approval under § 107.713.

\* \* \* \* \*

## **PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS**

3. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101-5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101-410 section 4 (28 U.S.C. 2461 note); Pub. L. 104-134 section 31001.

4. In § 171.7, revise paragraph (n)(3) to read as follows:

### **§ 171.7 Reference material.**

\* \* \* \* \*

(n) \* \* \*

(3) CGA Pamphlet C-6, Standards for Visual Inspection of Steel Compressed Gas Cylinders, 1993, into § 172.102, §173.3, 173.198, 180.205, 180.209, 180.211, 180.411, 180.519.

\* \* \* \* \*

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS,  
HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE  
INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS**

5. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101-5128; 44701; 49 CFR 1.53.

6. In § 172.101, revise following entries in the Hazardous Materials Table to read as follows:

**§ 172.101 Purpose and use of hazardous materials table.**

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification Numbers	PG	Label Codes	Special Provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations (see §§ 173.27 and 175.75)		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo air-craft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[Revise]												
	Ammonia solutions, <i>relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia</i>	8	UN2672	III	8	336, IB3, IP8, T7, TP1	154	203	241	5L	60L	A	40, 52, 85
	*		*		*		*		*		*		*
	Environmentally hazardous substances, solid, n.o.s.	9	UN3077	III	9	8, 146, 335, A112, B54, B120, IB8, IP3, N20, N91, T1, TP33	155	213	240	No Limit	No Limit	A	.....
	*		*		*		*		*		*		*
	Life-saving appliances, self-inflating	9	UN2990	.....	None	338	None	219	None	No limit	No limit	A	.....
	*		*		*		*		*		*		*
	Regulated medical waste, n.o.s. or Clinical waste, unspecified, n.o.s. or (BIO) Medical waste, n.o.s., or Biomedical waste, n.o.s. or Medical waste, n.o.s.	6.2	UN3291	II	6.2	41, A13, 337	134	197	197	No limit	No limit	B	40
	Self-heating solid, organic, n.o.s.	4.2	UN3088	II	4.2	IB6, IP2, T3, TP33	None	212	241	15kg	50kg	C	.....
				III	4.2	IB8, IP3, T1, TP33. B116	None	212	241	15kg	50kg	C	.....

7. Section 172.102 is amended:

- a. In paragraph (c)(1), Special provisions 336, 337, and 338 are added;
- b. In paragraph (c)(3), Special provision B116 is added; and
- c. In paragraph (c)(5), Special provision N91 is added.

The additions read as follows:

**§ 172.102 Special provisions.**

*	*	*	*	*
	(c)	*	*	*
	(1)	*	*	*

Code/Special Provisions

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336 The use of UN1H1 drums, UN3H1 jerricans, and UN6HA1 composite packagings which meet the requirements of Part 178 of the HMR at the Packing Group I or II performance level. These packagings are not required to: 1.) meet the venting requirements in § 173.24(g) or 2.) be marked with the hydrostatic pressure test marking specified in § 173.24a(b)(4). Shipment of packages under this special provision must be made by private or contract motor carrier. Transportation of these packages also requires the door of each van trailer to be marked with “Warning trailer may contain chemical vapor. Do not enter until vapors have dissipated.” The driver of the transport vehicle and the consignee(s) must be trained not to enter the transport vehicle until the ammonia vapors have dissipated, and the emergency response information on the shipping paper must indicate that the vehicle contains ammonia vapors. This training must be

documented in training records required by § 172.704(d). Transport vehicles must be vented to prevent accumulation of vapors at a poisonous or flammable concentration.

337 Authorizes the use of regulated waste containers manufactured prior to October 1, 2006 to be marked with the alternative shipping name of Regulated medical waste, UN3291 and arrows that deviate as prescribed in § 172.312(a)(2) in that they may be black or white.

338 Life Saving appliances, self-inflating transported between an U.S. Coast Guard approved inflatable life raft servicing facility and a vessel are only subject to the following requirements:

- a. Prior to repacking into the life-saving appliance, an installed inflation cylinder must successfully meet and pass all inspection and test criteria and standards of the raft manufacturer and the vessel Flag State requirements for cylinders installed as part of life-saving appliances, self-inflating (UN2990) used on marine vessels.  
  
Additionally, each cylinder must be visually inspected in accordance with CGA pamphlet, CGA C-6 (incorporated by reference, see § 171.7). A current copy of CGA pamphlet, CGA C-6 must be available at the facility servicing the life-saving appliance.
- b. An installed inflation cylinder that requires recharging must be filled in accordance with § 173.301(l).
- c. Every installed inflation cylinder, as associated equipment of the life-saving appliance, must be packed within the protective packaging of the life raft and the life raft itself must otherwise be in compliance with § 173.219.

- d. The serial number for each cylinder must be recorded as part of the life-saving appliance service record by the U.S. Coast Guard-approved servicing facility.

\* \* \* \*

(3) \* \*

Code/Special Provisions

\* \* \* \*

B116 The use of non specification, sift-proof dump or hopper type vehicles, and sift-proof roll-on/roll-off bulk bins, which must be covered by a tarpaulin, metal cover, or equivalent means is authorized for the transportation of spent bleaching earth by motor vehicle. The material is also be subject to operational controls which include not exceeding a temperature of 55C (130F) at the time it is offered or during transportation, not exceeding a transportation time of 24 hours, and drivers transporting spent bleaching earth must be trained in the properties and hazards of the spent bleaching earth. This training must be documented in training records required by § 172.704(d).

\* \* \* \*

(5) \* \*

Code/Special Provisions

\* \* \* \*

N91 The use of a non specification sift-proof, non-bulk, metal can with or without lid, or a non specification sift-proof, non-bulk fiber drum, with or without lid is authorized when transporting coal tar pitch compounds by motor vehicle or rail freight. The fiber drum must to be fabricated with a three ply wall, as a minimum. The coal tar pitch compound must be in a solid mass during transportation.



\* \* \* \* \*

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND  
PACKAGINGS**

8. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

9. In § 173.150, paragraph (g) is added to read as follows.

**§ 173.150 Exceptions for Class 3 (flammable and combustible liquids).**

\* \* \* \* \*

(g) *Limited quantities of retail products containing ethyl alcohol.* (1)

Beverages, food, cosmetics and medicines, medical screening solutions, and concentrates sold as retail products containing ethyl alcohol classed as a flammable liquid or flammable solid containing not more than 70% ethyl alcohol by volume for liquids, by weight for solids are excepted from the HMR provided that:

(i) For non-glass inner packagings:

(A) The volume does not exceed 16 fluid ounces in capacity for liquids; or

(B) For volumes greater than 16 fluid ounces but not exceeding 1 gallon the company name and the words “Contains Ethyl Alcohol” are marked on the package;

(C) Solids containing ethyl alcohol may be packaged in non-glass inner packagings not exceeding 1 pounds capacity;

(D) For weight greater than one pound up to 8 pounds the company name and the words “Contains Ethyl Alcohol” are marked on the package.

(ii) For glass inner packagings:

(A) The volume does not exceed 8 fluid ounces in capacity; or

(B) For volumes greater than 8 fluid ounces to 16 fluid ounces the company name and the words “Contains Ethyl Alcohol” are marked on the package;

(C) Solids containing ethyl alcohol may be packaged in glass inner packagings not exceeding ½ pound;

(D) For weight greater than 1/2 pound up to 1 pound the company name and the words “Contains Ethyl Alcohol” are marked on the package.

(iii) The net liquid contents of all inner packagings in any single outer packaging may not exceed 192 fluid ounces. The net solid contents of all inner packagings in any single outer packaging may not exceed 32 pounds. The gross weight of any single outer package shipped may not exceed 65 pounds; Inner packagings must be secured and cushioned within the outer package to prevent breakage, leakage, and movement.

(2) Beverages, food, cosmetics and medicines, medical screening solutions, and concentrates sold as retail products containing ethyl alcohol classed as a flammable liquid or flammable solid containing more than 70% ethyl alcohol by volume, by weight for solids are excepted from the HMR provided that:

(i) For inner packagings containing liquids the volume does not exceed 8 fluid ounces in capacity;

(ii) Solids containing ethyl alcohol are not packed in inner packagings exceeding ½ pound in weight;

(iii) The net liquid contents of all inner packagings in any single outer packaging may not exceed 192 fluid ounces. The net solid contents of all inner packagings in any single outer packaging may not exceed 32 pounds. The gross weight of any single outer package shipped may not exceed 65 pounds. Inner packagings must be secured and cushioned within the outer package to prevent breakage, leakage, and movement.

(3) For transportation by passenger or cargo aircraft, no outer package may be transported which contains an inner packaging exceeding:

- (i) 16 fluid ounces of flammable liquid, or
- (ii) 1 pound of solids containing flammable liquid.

## **PART 175 - CARRIAGE BY AIRCRAFT**

10. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101-5128, 44701; 49 CFR 1.45 and 1.53

11. Add § 175.34 to read as follows:

### **§ 175.34 Exceptions for Cylinders of Compressed Oxygen or Other Oxidizing Gases Transported Within the State of Alaska.**

(a) *Exceptions.* When transported in the State of Alaska, cylinders of compressed oxygen or other oxidizing gases aboard aircraft are excepted from all the requirements of §§ 173.302(f)(3) through (5) and 173.304(f)(3) through (5) of this subchapter subject to the following conditions:

(1) Transportation of the cylinders by a ground-based or water-based mode of transportation is unavailable and transportation by aircraft is the only practical means for transporting the cylinders to their destination;

(2) Each cylinder is fully covered with a fire or flame resistant blanket that is secured in place; and

(3) The operator of the aircraft complies with the applicable notification procedures under § 175.33.

(b) *Aircraft restrictions.* This exception only applies to the following types of aircraft:

(1) Cargo-only aircraft transporting the cylinders to a delivery destination that receives cargo-only service at least once a week.

(2) Passenger and cargo-only aircraft transporting the cylinders to a delivery destination that does not receive cargo only service once a week.

## **PART 178--SPECIFICATIONS FOR PACKAGINGS**

12. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101-5128; 49 CFR 1.53.

13. In 178.516, paragraph (b)(7) is added to read as follows:

### **§ 178.516 Standards for fiberboard boxes.**

\* \* \* \* \*

(b) \* \* \*

(7) Authorization to manufacture, mark, and sell UN4G combination packagings with outer fiberboard boxes and with inner fiberboard components that have individual

containerboard or paper wall basis weights that vary by not more than plus or minus 5% from the nominal basis weight reported in the initial design qualification test report.

14. In 178.521, paragraph (b)(4) is added to read as follows:

**§ 178.521 Standards for paper bags.**

\* \* \* \* \*

(b) \* \* \*

(4) UN5M1 and UN5M2 multi wall paper bags that have paper wall basis weights that vary by not more than plus or minus 5% from the nominal basis weight reported in the initial design qualification test report.

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Cynthia L. Quarterman

Administrator,

Pipeline and Hazardous Materials Safety Administration

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